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Intoxicated Driver Laws

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Intoxicated Driver Laws

There were nearly 19,000 convictions in 2021 for impaired driving offenses in the state of Wisconsin, ranking among the most common traffic offenses. Impaired driving also presents a significant public safety issue as alcohol use was a factor in 27.9% of traffic fatalities in 2021. Given the impact of intoxicated driving on both the judicial system and public safety, the state's impaired driving laws typically attract interest and attention from both the Legislature and the public during each legislative session.

There are several intoxicated driving offenses that are commonly referred to collectively as "drunk driving" or "impaired driving." In this paper, a distinction is made between the offense of operating a motor vehicle while intoxicated, here termed a "basic" operating while intoxicated (OWI) offense, and other offenses, such as causing injury or death as the result of operating a motor vehicle while intoxicated or certain impaired driving offenses involving a commercial motor vehicle. Collectively, these are referred to as "operating while intoxicated or other counted" offenses, reflecting that these other offenses are counted as prior offenses for the purpose of determining fines, jail periods, and other sanctions for a basic OWI offense.

This paper provides a description of the state's OWI laws, including the penalties and other sanctions that may be applied for each violation (including for the operation of recreational vehicles). It also provides information on state programs related to OWI enforcement and prevention, and federal impaired driving provisions. The paper concludes with a section on OWI statistics for the most recent 10 years.

Wisconsin's Operating While Intoxicated Law and Related Violations

Description of Basic OWI Offense

For the purpose of OWI enforcement, state law defines the operation of a motor vehicle as the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion. In turn, state restrictions on intoxicated operation of motor vehicles generally apply to all of the following locations: (a) highways (broadly defined); (b) all premises held out to the public for their use of motor vehicles; (c) all premises provided by employers to employees for the use of their motor vehicles; and (d) all premises provided to tenants of rental housing in buildings of four or more units for the use of their motor vehicles. This restriction does not extend to parking areas at farms or single-family residences.

Wisconsin's basic operating while intoxicated law encompasses three distinct offenses, each requiring the proof of a different fact for conviction. The first offense prohibits a person from operating or driving a motor vehicle while: (a) under the influence of an intoxicant (including a hazardous inhalant), or a controlled substance (or controlled substance analog), or any combination of an intoxicant and a controlled substance (or analog); or (b) under the influence of any other drug to a degree which renders him or her incapable of safely driving or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving. This offense, which has been part of Wisconsin's law in some form since the advent of motor vehicles, requires the proof of impairment for conviction. [In cases

involving "any other drug" in the definition above, the prosecution must also demonstrate that the defendant met the "incapable of safely driving" standard.] The evidence presented at trial consists of observations made by law enforcement officers or other witnesses, including driving behavior and the results of a field sobriety test.

The second offense prohibits any person from operating or driving a motor vehicle with a prohibited blood alcohol concentration. Unlike the first offense, no proof of impairment is required for conviction. Instead, the element for conviction is the numerical measurement of blood alcohol level, taken through a test of the person's blood, breath, or urine. This so-called "per se" law (because a certain blood alcohol level is per se, or, "by itself," a violation of law) was enacted in 1981, with the prohibited alcohol concentration established at 0.10 (measured as grams of alcohol per 100 milliliters of blood, or roughly equivalent to 0.10% alcohol by volume).

The blood alcohol concentration considered the threshold for a violation has since been changed several times, most notably in 2003, when the standard prohibited blood alcohol concentration was lowered to 0.08. Since 1992, the prohibited blood alcohol concentration has been established at a lower level for certain repeat offenders. Currently, the threshold is 0.02 for persons subject to an ignition interlock device order (described in more detail in a later section) and for persons with three or more previous convictions, suspensions, or revocations.

The third offense prohibits any person from operating or driving a motor vehicle with a detectable amount of a restricted controlled substance in his or her blood. Like the "per se" blood alcohol law, simply the presence of a restricted controlled substance is considered a violation, meaning no evidence of impairment is required. For the purposes of this provision, a restricted controlled substance is any of the substances listed in Schedule I of the state's uniform controlled substances act (or

any analogs of those substances, and other than a tetrahydrocannabinol), which are drugs with a high potential for abuse and with no currently accepted medical use. In addition, the definition of restricted controlled substance includes a few substances that, although not included in Schedule I, are commonly-abused hallucinogenic or stimulant drugs, including cocaine (or any of its metabolites), methamphetamine, and the active substance contained in marijuana (Delta-9-tetrahydrocannabinol, excluding any of its precursors or metabolites).

Although a person may be charged with any combination of these violations arising from a single incident, a person can only be convicted for one basic OWI offense arising from that incident.

Related Offenses and Counting of Prior Offenses for Sentencing

As with many other civil and criminal violations, the penalties for a basic OWI conviction depend upon the number of prior convictions. However, in addition to counting prior basic OWI convictions for the purposes of sentencing, the state's OWI law requires prior convictions of several related offenses to also be counted. The following sections describe the related offenses that are counted for sentencing purposes, and the provisions related to the time periods that are considered for counting prior offenses.

Causing Injury, Great Bodily Harm, or Death by Intoxicated Use of a Vehicle. If a person causes injury, great bodily harm, or death by the intoxicated use of a motor vehicle, he or she may be charged with a criminal offense distinct from the basic operating while intoxicated violation described above. For the offense involving injury, the elements of the offense are identical to the basic operating while intoxicated violation, except for the occurrence of an injury. That is, a criminal offense occurs if the operator of a vehicle causing injury is either under the influence of an intoxicant, controlled substance (or analog), or any other

drug to a degree which renders him or her incapable of safely driving, has a prohibited alcohol concentration, or has a detectable amount of a restricted controlled substance in his or her blood.

The elements of the offenses involving great bodily harm or death are slightly different than for the basic operating while intoxicated violation. In these cases, the criminal offense occurs when a person causes death or great bodily harm to another human being or unborn child by the operation of a vehicle while the person: (a) was under the influence of an intoxicant; (b) has a prohibited blood alcohol concentration; (c) has a detectable amount of a restricted controlled substance in his or her blood; or (d) was operating a commercial motor vehicle with an alcohol concentration between 0.04 and 0.08. For the purposes of these provisions, "under the influence of an intoxicant" is defined to mean that the person's ability to operate a vehicle is "materially impaired." The term "great bodily harm" means an injury that either: (a) creates a substantial risk of death; (b) causes serious permanent disfigurement; (c) causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or (d) is another serious bodily injury.

With respect to the offenses involving great bodily harm or death, the statutes specify that the vehicle operator has a defense if he or she proves by a preponderance of the evidence that the great bodily harm or death would have occurred even if he or she had not been under the influence of an intoxicant or had not met one of the other "per se" criteria for the violation. Consequently, although the great bodily harm and homicide by intoxicated use of a motor vehicle provisions have an element of the "per se" offense used for the standard operating while intoxicated offense, the blood alcohol concentration or restricted controlled substance measurement may not be sufficient for a conviction.

Implied Consent Refusal. Under Wisconsin

law, any person who drives or operates a motor vehicle on a public road or other place open to public use is generally deemed to have given consent to one or more tests for the presence of alcohol or controlled substances. The principle behind this "implied consent" law is that driving a motor vehicle is a privilege for which the driver consents to be tested for evidence of intoxication if stopped by a law enforcement officer. The results of that test are used in an administrative proceeding to determine whether the driver's operating privilege should be suspended. If a person refuses to submit to a chemical test upon the request of a law enforcement officer, under the statute, a driver's operating privilege will be revoked.

Federal courts have generally upheld the validity of implied consent laws in the United States against challenges on Fourth Amendment (prohibition against illegal search or seizure) and Fifth Amendment (prohibition against compelling self-incrimination) grounds. However, in June, 2021, the Wisconsin Supreme Court held that the statute presuming that consent is not withdrawn for an incapacitated driver is unconstitutional and requires a warrant (*State v. Prado*). Yet, in March, 2022, the same court held that blood drawn without a warrant may be admissible as evidence in certain situations (such as blood drawn by a hospital for treatment purposes) (*State v. Linn*).

An implied consent refusal is generally not considered a violation of law, per se, but, instead is considered a failure to meet the prerequisites for maintaining the privilege to operate a motor vehicle. Yet, for the purposes of sentencing for an operating while intoxicated offense, any previous license revocation imposed for an implied consent refusal is counted as if it was a prior "offense," even if the person is not charged with an OWI offense arising out of the same incident or is later acquitted of an OWI charge. Only one prior offense is counted for each incident. That is, if a person's license is revoked for refusing to submit to a test of intoxication and the person is later convicted of an operating while intoxicated offense

arising from the same incident, that refusal revocation and the subsequent conviction are counted as a single "prior offense" for the purposes of sentencing on any future OWI convictions. However, in June, 2022, the Wisconsin Supreme Court held that it is unconstitutional to count prior revocations for refusing to submit a warrantless blood draw as offenses for the purpose of increasing the criminal penalty (*State v. Forrett*). More information on tests for intoxication is provided in a later section of this paper.

Aircraft Operation. The operation of an aircraft while intoxicated is considered a "prior offense" for the purpose of sentencing following an OWI conviction. Under the intoxicated aircraft operation statute, no person may operate an aircraft: (a) under the influence of alcohol or a controlled substance (or analog); (b) under the influence of any other drug that renders him or her incapable of safely operating the aircraft; or (c) with a prohibited alcohol concentration. For the purpose of this provision, the prohibited alcohol concentration threshold is 0.04 if there are no passengers in the aircraft and 0.0 if the aircraft contains passengers.

Violations Occurring in Other Jurisdictions. Any OWI convictions or license revocations (or suspensions) for an implied consent refusal under the laws of other jurisdictions, including the laws of a federally recognized American Indian tribe or band, are counted as prior offenses for the purposes of sentencing in Wisconsin. Although absolute sobriety violations occurring in Wisconsin are not counted as prior offenses for the purposes of sentencing for a subsequent OWI offense, a 2010 ruling of the Wisconsin Supreme Court found that an absolute sobriety violation occurring in another state must be counted as a prior offense in sentencing for a Wisconsin OWI offense.

Time Periods for Counting Prior Offenses

Generally, all prior convictions for an OWI offense, or for any of the related violations

described above, are counted as prior offenses for the purposes of sentencing following an OWI conviction. However, if a person has only one prior conviction for an OWI offense, causing injury while intoxicated, intoxicated aircraft operation, or an implied consent refusal, and that conviction occurred more than 10 years prior to a subsequent OWI offense, the current offense is treated the same as a first OWI offense for the purposes of prosecution and penalties. That is, in these circumstances, although the person has committed a second offense, it is treated as a civil (rather than criminal) violation, subject to the same penalties as a first OWI offense. However, if the prior offense was for causing great bodily harm or death by the intoxicated use of a vehicle, the subsequent offense is prosecuted as a second offense, regardless of the amount of time elapsed from the prior offense. [For the purposes of license revocation, there are a different set of counting periods and standards, discussed under the "Driver's License Revocation and Occupational License Provisions" section.]

Related Motor Vehicle Alcohol Offenses Not Counted As Prior Offenses for OWI Sentencing

The state has several other motor vehicle laws that are related to alcohol and the operation of motor vehicles, but which are not counted as prior offenses for the purpose of sentencing for the basic OWI offense.

Commercial Motor Vehicle Alcohol Operation. As noted above, the prohibited alcohol concentration establishes the threshold for the "per se" OWI offense for the operation of a motor vehicle. In most cases, that threshold is a blood alcohol level of 0.08, although the threshold is lower for certain repeat offenders. However, the statutes create a distinct "per se" offense as it relates to the operation of a commercial motor vehicle. Accordingly, a person may be found guilty of a violation if he or she drives or operates a commercial motor vehicle with a blood alcohol concentration of 0.04

or more, but less than 0.08, or causes an injury to another person while operating a commercial motor vehicle with a blood alcohol level within that range. [The basic OWI statute applies to the operator of a commercial motor vehicle with a blood alcohol level of 0.08 or above.] While these violations are not counted for the purpose of sentencing on a basic OWI conviction, they are counted in determining the length of a subsequent license revocation for an implied consent refusal and are used to determine the prohibited blood alcohol threshold for repeat OWI offenders. In addition, these violations are counted for the purpose of determining the sentence of a person who has committed a subsequent offense of operating a commercial motor vehicle with a blood alcohol concentration of 0.04 or more, but less than 0.08.

Generally, the penalties for these commercial motor vehicle alcohol violations are similar to the corresponding basic OWI violations. In this paper, these offenses are referred to as "commercial motor vehicle OWI" and "commercial motor vehicle OWI causing injury."

Commercial Motor Vehicle Absolute Sobriety and Alcohol Consumption While on Duty Time. In addition to creating a separate blood alcohol threshold for the operation of a commercial motor vehicle, Wisconsin law has a separate offense for lower levels of alcohol use by commercial motor vehicle drivers. Under this provision, a person may not drive or operate a commercial motor vehicle or be on duty time with respect to a commercial motor vehicle in the following circumstances: (a) with a blood alcohol level above 0.0; (b) within four hours of having consumed or having been under the influence of an intoxicating beverage; or (c) while possessing an intoxicating beverage, except for the purposes of shipment and delivery. A law enforcement officer who arrests a commercial motor vehicle driver for a violation of these provisions is required to issue the driver a 24-hour out-of-service order, prohibiting the operation of a commercial motor vehicle during that time.

Recreational Vehicles. State OWI laws prohibit the operation of a snowmobile, motorboat, all-terrain vehicle (ATV), utility-terrain vehicle (UTV), and off-highway motorcycle under the following circumstances: (a) with a blood alcohol concentration of 0.08 or more; (b) with a detectable amount of a restricted, controlled substance in one's blood; or (c) under the influence of an intoxicant to a degree which renders one incapable of safe operation of such a vehicle. Additional prohibitions exist for certain age-based circumstances. As designated by the governmental agency with jurisdiction (state agency or local unit of government), ATVs and UTVs can operate legally on trails, highways, or sidewalks.

Violations of recreational vehicle OWI laws are penalized and counted differently than violations of automobile and commercial vehicle OWI laws. For instance, instead of the 10-year counting period for other motor vehicle types described earlier, convictions for operating a recreational vehicle while intoxicated are only counted during a five-year period. In general, for operators of these recreational vehicles, a first offense OWI conviction results in a forfeiture of not less than \$150 and not more than \$300. A second violation within five years generally results in a fine of not less than \$300 and not more than \$1,100 and a term of imprisonment of not less than five days or more than six months. A third or subsequent basic violation is punishable by a fine of not less than \$600 and not more than \$2,000 and a term of imprisonment of not less than 30 days or more than one year.

For sentencing purposes, these violations are counted separately, by vehicle type. For example, if a person is convicted of intoxicated operation of a motorboat and snowmobile within a five-year period, each conviction would be treated as a first offense. In addition, such violations have no effect on one's driver license status.

Absolute Sobriety for Underage Drivers. State law prohibits a person who has not reached the

legal drinking age of 21 years of age from driving if he or she has a blood alcohol concentration above 0.0. This law is typically referred to as the "absolute sobriety law." Although these violations, when occurring in Wisconsin, do not count as a prior offense for the purpose of sentencing for a subsequent basic OWI conviction, those occurring in other states are counted for that purpose.

Intoxicants in Motor Vehicles; Open Container. Wisconsin law places restrictions on both the transport and consumption of alcohol in a motor vehicle. Accordingly, no person (driver or passenger) may drink alcohol while in a motor vehicle on a public highway and no person in a privately-owned motor vehicle may possess on his or her person an opened container of alcohol. Furthermore, the owner or driver of a vehicle (if the owner is not present) may not keep (or allow to be kept) an opened alcoholic beverage container in the passenger compartment. An exception to these provisions is provided for passengers in a limousine or motor bus driven by a chauffeur, and for containers of alcohol held in a trunk, or if the vehicle has no trunk, in some other area not normally occupied by the driver or passenger(s).

A person under the age of 21 may not knowingly possess or transport alcoholic beverages by motor vehicle in any area of the vehicle, with exceptions related to the transport of alcohol by employees of alcohol-related businesses, such as alcohol distributors.

Recreational Vehicles; Open Container. There is no statutory prohibition on the possession of an open intoxicant by persons in a recreational vehicle (a snowmobile, motorboat, ATV, UTV, or off-highway motorcycle), including the vehicle operator. However, by ordinance, local governments may opt to prohibit open intoxicants in such vehicles on roads or in areas under their jurisdiction. Again, as designated by the governmental agency with jurisdiction (state agency or local unit of government), ATVs and UTVs can operate legally on trails, highways, or sidewalks.

Penalties, Sanctions, and Treatment Measures

The penalties imposed upon conviction for an OWI offense depend upon the number of prior offenses a person has accumulated and are subject to some judicial discretion. The following section describes the penalties for a basic OWI offense and for the related offenses described in the previous section.

Forfeitures or Fines and Other Criminal Sanctions

Upon conviction for an OWI or related offense, the court is required to impose a forfeiture or a fine, and, in some cases, additional criminal penalties (jail or prison terms or some jail sentence alternatives). The terms "forfeiture" and "fine" distinguish, respectively, between a civil case and a criminal case. A first basic OWI offense and some of the other related offenses are civil violations, subject to a forfeiture, but no prison or jail (or jail alternative) sentence. Repeat OWI violations (except for a second offense that occurs more than 10 years following the first) and more serious related offenses are criminal offenses, subject to a fine and other criminal penalties. For example, all fourth and subsequent OWIs are classified as felonies.

Table 1 shows the forfeiture and fine ranges for OWI and related offenses and the criminal sentences imposed for each. Although the table expresses the criminal sentences as "jail or prison" time, various alternative sentencing methods are available, including home detention with electronic monitoring. Typically, sentences of less than one year are served in the county jail while sentences of one year or more are served in a state prison. In addition to the basic penalties shown in the table, there are certain circumstances that result in enhanced or reduced penalties, which are described below.

Table 1: Fines or Forfeitures and Jail or Prison Sentences for OWI and Related Offenses

	Fine or Forfeiture	Jail or Prison Sentence
Basic Motor Vehicle OWI		
First	\$150 to \$300 forfeiture	None
Second	\$350 to \$1,100 fine	Five days to six months
Third	\$600 to \$2,000 fine	45 days to one year
Fourth	\$600 to \$10,000 fine	60 days to six years
Fifth or Sixth	\$600 to \$25,000 fine	18 months to 10 years*
Seventh, Eighth, or Ninth	Up to \$25,000 fine	Three to 12.5 years
Tenth or Subsequent	Up to \$50,000 fine	Four to 15 years
Related Offenses Counted as "Prior Offenses"		
OWI Causing Injury**		
First	\$300 to \$2,000 fine	30 days to one year***
Second	Up to \$10,000 fine	Up to six years
OWI Causing Great Bodily Harm**		
	Up to \$25,000 fine	Up to 12.5 years
OWI Causing Death**		
First	Up to \$100,000 fine	Five to 25 years
Second	Up to \$100,000 fine	Five to 40 years
Intoxicated Aircraft Operation		
First	\$150 to \$300 forfeiture	None
Second	\$350 to \$1,100 fine	Five days to six months
Third	\$600 to \$2,000 fine	30 days to one year
Fourth	\$600 to \$2,000 fine	60 days to one year
Fifth or Subsequent	At least \$600 fine	Six months to six years
Other Motor Vehicle Alcohol-Related Offenses		
Employment of Drunken Operators	\$50 to \$500 fine	Up to six months
Commercial Motor Vehicle OWI		
First	\$150 to \$300 forfeiture	None
Second	\$300 to \$1,000 fine	Five days to six months
Third or Subsequent	\$600 to \$2,000 fine	45 days to one year
Commercial Motor Vehicle Absolute Sobriety/ Alcohol Use on Duty Time	Additional \$10 forfeiture	None
Absolute Sobriety, Underage Operator	\$200 forfeiture	None
Intoxicants in Motor Vehicle/Open Container	Up to \$100 forfeiture	None

*Under 2019 Act 106, the mandatory minimum was changed from six months to 18 months. The court may impose a term of confinement that is less than 18 months if the court finds that the best interests of the community will be served, the public will not be harmed, and if the court places its reason(s) on the record.

**Includes causing injury, great bodily harm, or death with a commercial motor vehicle with a blood alcohol level between 0.04 and 0.08. Under 2019 Act 31, a mandatory minimum of five years was imposed for homicide by intoxicated use of a vehicle. A court may impose a term less than the five year minimum if the court finds a compelling reason(s) and places the reason(s) on the record.

***A court may impose less than the 30-day minimum if the person injured was an adult in the vehicle operated by the offender and the court finds that such treatment best serves the interest of the community and will not harm the public.

Penalty Enhancers for Certain Circumstances

If there was a minor passenger under the age of 16 years in the vehicle at the time of a first OWI violation, the offender is penalized similarly to a second OWI offense. If there was a minor passenger under the age of 16 years in the vehicle at the time of a second or subsequent OWI violation, the applicable maximum and minimum fines or forfeitures and jail or prison terms are doubled. In cases of a third or subsequent basic OWI violation with the presence of a minor passenger under 16 years of age, the violation becomes a criminal offense (a felony). For the purposes of this paragraph, "OWI violation" includes basic OWI, OWI causing injury, absolute sobriety violation for an underage driver, commercial motor vehicle OWI, or commercial motor vehicle OWI causing injury.

The applicable minimum and maximum fines are doubled, tripled, or quadrupled for certain repeat offenders who had a blood alcohol level within certain ranges at the time of arrest for a basic OWI or intoxicated aircraft operation offense. Specifically, fines are doubled for a blood alcohol level of 0.17 to 0.199, tripled for a blood alcohol level of 0.20 to 0.249, and quadrupled for a blood alcohol level of 0.25 or above. These enhanced fines apply for a third through sixth basic OWI offense and for a third or subsequent intoxicated aircraft operation offense. Similar provisions apply to persons convicted of operating recreational vehicles or aircrafts with a blood alcohol level in these ranges. In addition to these enhancers, a judge may order an offender to pay restitution.

Probation Provisions Applicable to OWI Offenders

A person may be placed on state probation for a second, third, or fourth OWI offense, provided that the person serves at least the minimum jail sentence prior to beginning probation supervision. The term of probation, if ordered, must be between

six months and two years for a second or third OWI offense, and between one year and three years or the maximum prison term for the offense, whichever is greater, for an OWI offense classified as a felony (all fourth and subsequent offenses, and causing great bodily harm or death by the intoxicated use of a vehicle). Following a conviction for a fifth or subsequent offense, the judge must impose a bifurcated sentence, with a minimum period of confinement of at least 18 months for a fifth or sixth OWI conviction, three years for a seventh, eighth, or ninth OWI conviction, and four years for a tenth or subsequent OWI conviction, followed by a period of extended supervision. Since a bifurcated sentence is required, placement on probation is not a sentencing option for a fifth or subsequent OWI conviction.

Penalty Reductions for Certain Circumstances

In certain jurisdictions, OWI offenders who are convicted of a basic OWI or OWI commercial motor vehicle offense that is counted as a second, third, or fourth OWI offense and who successfully complete a period of probation that includes alcohol and other drug abuse treatment may be eligible for a reduced sentence. Under this sentencing option, the minimum jail sentence for a second offense remains five days, but the maximum is reduced from six months to seven days. For a third offense, the minimum sentence is reduced from 45 days to 14 days, and for a fourth OWI offense, the minimum sentence is reduced from 60 days to 29 days. An offender is eligible for the sentence reduction only once in his or her lifetime. The reduced sentencing option has been available in Winnebago County since 2006, but was expanded to any county that wishes to participate with the passage of 2009 Act 100. Currently, in addition to Winnebago County, Judicial Administrative Districts 5 (south-central Wisconsin), 7 (southeast Wisconsin), and 8 (northeast Wisconsin) allow for reduction in a jail sentence if an offender successfully completes an approved treatment court program (District 5) or probation, which includes alcohol and other drug treatment, under certain

circumstances (Districts 7 and 8). Judicial Administrative Districts 1 (Milwaukee), 2 (southwest Wisconsin), and 3 (northeast of Milwaukee) use treatment completion as a mitigating factor at sentencing, but do not have specific sentencing reduction guidelines).

The statutes do not establish particular treatment program criteria. While treatment is based on a clinical assessment completed by a treatment provider, required services vary based on provider, client need, and insurance. Services could include completing a safe driving course (offered at most technical colleges), attending a victim impact panel, submitting to random chemical testing, receiving additional clinical treatment for a moderate to severe substance use disorder, and/or completing prescribed driver safety plan treatment (described in more detail in a later section on the alcohol assessment and driver safety plan). Failure to meet all prescribed requirements results in a lengthened jail sentence.

In addition to confinement time reductions, if the court determines that an offender does not have the ability to pay the imposed fine or forfeiture, the court may reduce the costs. In lieu of part or all of a fine imposed for a first through sixth basic OWI offense, or in addition to such offense, the court may also provide that the offender perform community service work for a public agency or nonprofit charitable organization.

Other Imprisonment Provisions Applicable to OWI Offenders

Persons with two or more counted OWI convictions are required to remain in county jail for at least a 48-consecutive-hour period. Further, a person who is given a jail or prison sentence for an OWI offense is not eligible for presentence release (release from custody following conviction but prior to sentencing) if the conviction is for a third or subsequent OWI offense or for causing great bodily harm or homicide by intoxicated use of a vehicle. Likewise, a court generally may not stay

the execution of a jail sentence for a person convicted of a third or subsequent OWI offense or for causing great bodily harm or homicide by intoxicated use of a vehicle.

A person who is given a jail or prison sentence for an OWI offense is generally eligible for work release privileges (applicable to most inmates, except those convicted of certain serious crimes). However, a person sentenced to serve a sentence in a county jail for an OWI offense who is also subject to an ignition interlock device order (described in more detail below) may not be given work release privileges unless the person submits proof, within two weeks after the court issues the order, that an ignition interlock device has been installed on each vehicle to which the order applies.

Driver Improvement Surcharge

In addition to the payment of a fine or forfeiture (and penalty surcharges, applicable to all criminal and civil cases), a person convicted of an OWI or other counted offense, or of a commercial motor vehicle OWI, is required to pay a \$435 driver improvement surcharge. Additional information on the driver improvement surcharge and the programs funded by the surcharge is provided in a later section of this paper.

Other surcharges and court fees are charged in OWI cases, but are not unique to these offenses. More information on these surcharges and fees can be found in the Legislative Fiscal Bureau's Informational Paper entitled, "Wisconsin Court System." A later section of this paper illustrates the cost to the offender for a typical OWI conviction, including the amount of the driver improvement surcharge and other surcharges and fees.

Driver's License Revocation and Occupational License Provisions

License Revocation and Occupational Licenses. The Department of Transportation (DOT)

is required to revoke the driver's license of a person who is convicted of an OWI offense or one of the other counted offenses. The time period of the revocation depends upon the number of prior OWI or other counted offenses, if any, that the person has on his or her record. A person whose license has been revoked may be eligible to receive an occupational license, which allows restricted driving privileges, typically to and from work. In most cases, an occupational license may be issued immediately upon revocation or after a waiting period, depending upon the type of offense and the number of prior counted OWI or related offenses.

However, under 2017 Act 172, DOT must revoke a person's driver license permanently if the person is convicted, revoked, or suspended for four or more OWI (or other counted) offenses, and if the fourth offense occurs within a 15-year period of the prior OWI conviction, revocation, or suspension. Act 172 also required permanent license revocation for persons convicted of injury or homicide by intoxicated driving offenses under the following conditions: (a) the number of OWI convictions, suspensions or revocations during a 25-year period equals two or more; and (b) and the person has two or more "qualifying convictions" in their lifetime. Act 172 defined a qualifying conviction as: (a) a felony under the motor vehicle code; (b) a felony in the commission of which a motor vehicle is used; and (c) conviction of homicide by second-degree reckless, intoxicated, or negligent use of a motor vehicle (which are also felonies). Second-degree homicide by intoxicated use of a firearm is also counted as a qualifying offense, if the offense involves the use of a vehicle. If certain conditions are met, persons with permanently revoked licenses may apply for license reinstatement after 10 years. Although these provisions first apply to offenses committed on or after December 1, 2018, courts may count prior convictions, revocations, or suspensions for sentencing purposes. [Act 172 also increased the penalties for driving with a revoked license and for driving without proof of insurance, when the license revocation is permanent.]

Table 2 shows the length of revocation for each offense and the waiting period for occupational license eligibility. If the person is given a jail sentence as the result of the OWI conviction, the license revocation period is extended by the amount of the sentence. The revocation periods (both minimum and maximum, where applicable) are doubled if there was a minor passenger under the age of 16 in the vehicle at the time of the offense.

Operating a Motor Vehicle with a Revoked License Following OWI Conviction. Operating a motor vehicle with a revoked license (or in violation of occupational license restrictions) is a criminal offense if the license was revoked for an OWI offense or for an implied consent refusal. Penalties for an operating after revocation conviction generally include a fine of up to \$2,500 and a jail sentence of up to one year (although a fine of up to \$10,000 applies if the offense occurs while the operator's license is permanently revoked under the provisions of 2017 Act 172). These penalties are increased if the person causes death or great bodily harm while operating with a revoked license, and are respectively considered a Class H felony (a fine not to exceed \$10,000 or imprisonment not to exceed six years, or both) or Class I felony (a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both), if the person knows at the time of the violation that their operating privilege has been revoked.

Impacts on Commercial Motor Vehicle Licenses. Persons who hold a commercial motor vehicle driver's license face additional restrictions on that license as the result of OWI or OWI-related convictions, even if those offenses did not involve the use of a commercial motor vehicle. A person is disqualified from operating a commercial motor vehicle for one year upon any conviction of a basic OWI offense, any of the other offenses included in Table 2, or any OWI commercial motor vehicle offense. Upon conviction of any second or subsequent offense, the person is disqualified for life from operating a commercial motor vehicle.

Table 2: Driver's License Revocation Periods and Occupational License Eligibility Waiting Periods for OWI and Related Offenses

	Revocation Period	Occupational License Waiting Period
Basic OWI		
First	6 months to 9 months	None (immediate eligibility)
Second	1 year to 18 months	45 days
Third	2 years to 3 years	45 days
Related OWI Offenses		
OWI Causing Injury		
First	1 year to 2 years	60 days
Second	1 year to 2 years	1 year*
OWI Causing Great Bodily Harm		
First	2 years	120 days
Second	2 years	1 year*
OWI Causing Death		
First	5 years	120 days
Second	5 years	1 year*
Implied Consent Refusal		
First	1 year	30 days
Second	2 years	1 year*
Third	3 years	1 year*

*Two or more offenses within any five-year period. Prior offense or offenses may be a basic OWI offense or another related OWI offense.

Note: Under 2017 Act 172, conviction of certain 4th OWI offenses, as well as conviction of various combinations of OWI offenses (including OWI causing death or great bodily harm) and certain driving-related offenses, may result in permanent license revocation (for a minimum period of 10-years) and ineligibility for occupational licensing.

License Reinstatement Following Revocation for OWI. A person whose license has been revoked for an operating while intoxicated offense or an implied consent refusal must pay a reinstatement fee of \$200. This fee consists of a \$50 regular reinstatement fee and a \$10 issuance fee, applying to all license reinstatements, plus a \$140 fee applying only to OWI and related offenses. The regular reinstatement fee and the issuance fee (\$60 total) are deposited to the transportation fund, while the \$140 fee is transferred to the general fund.

In addition to the required reinstatement fee, certain persons who have one or more prior OWI offenses are required to file proof of automobile insurance with the Department prior to receiving a license (or an occupational license). The proof of

insurance requirement applies to anyone who has at least one prior offense within the previous five years or two or more prior offenses in the previous 10 years. Proof of insurance must be maintained for three years following reinstatement, and failure to do so results in license revocation.

Ignition Interlock Device Restriction and Vehicle Sanctions

An ignition interlock device is an instrument installed in a vehicle that prevents the vehicle from operating if the presence of alcohol at or above the prohibited concentration is detected in the driver's breath. The driver is required to exhale into the machine prior to initial operation and at periodic intervals during operation thereafter. In 2021, DOT issued over 11,000 ignition interlock devices.

Under Wisconsin law, certain OWI offenders are subject to ignition interlock device requirements, which take the form of both a license restriction and a vehicle installation order. The former applies to the driver, regardless of which vehicle he or she is operating, while the latter applies to any vehicle or vehicles on which the person's name appears on the certificate of title or registration (with certain exceptions, described below), regardless of who drives the vehicle.

In general, courts are required to order an ignition interlock device driver's license restriction for any person who: (a) is convicted of a second or subsequent basic or other counted OWI offense; (b) is convicted of a first OWI violation and who had a blood alcohol level of 0.15 or above at the time of the offense; or (c) refuses a blood alcohol test. The restriction must be for at least one year, but not more than the maximum license revocation period for the offense, although if the maximum revocation period for the offense is less than one year (for a first OWI offense or an implied consent refusal, for example), then the restriction period must be one year. Courts may specify the date by which an ignition interlock device must be installed at the time the order is issued. If the court does not specify a date for the ignition interlock restriction, this restriction is effective on the date of the order. Courts are also required to extend the restriction by six months for each violation of an ignition interlock order.

Since the driver's license restriction does not begin until a person's full or partial operating privileges are restored, it may not apply during the period immediately following an OWI conviction while the license revocation or suspension is in effect. However, the court must also impose a vehicle installation order and may order that the installation occur immediately. Consequently, a person's vehicle or vehicles may be equipped with an ignition interlock device even though he or she may not legally be able to drive.

A person who is subject to an ignition interlock

device order is responsible for arranging for the installation of the device or devices, which is done by a number of companies doing business in the state. Once installed, these firms do periodic service on the devices, which includes collecting performance information, such as a record of test failures and attempts at tampering.

The person subject to an ignition interlock device order is responsible for paying the installation and maintenance costs of the device or devices. If convicted of a qualifying offense, the court will assess the offender a \$50 surcharge. Service providers typically charge between \$65 and \$400 to install each device, and between \$45 and \$195 to remove each device. In addition, service providers typically charge a monthly maintenance fee of about \$65 to \$80, and \$15 to \$50 every two months for mandatory periodic recalibration. The total, annual cost can range from \$900 to \$1,700 per device, depending on the device and vehicle ignition system. Generally, cost figures on the upper end of this range are required for installation of "high-end" ignition systems, which are needed for later model vehicles that have keyless or push button ignition systems. The sentencing court is required to limit the installation and maintenance costs to one-half the normal fee for persons who have a household income at or below 150% of the federal poverty line. DOT is responsible for approving ignition interlock device service providers in the state, and is required to ensure that such service providers accept reduced payments. In addition, a court may exclude one or more vehicles from a vehicle installation order if it finds that installing devices on all applicable vehicles would pose an undue financial hardship.

A person who is subject to an ignition interlock device order may not remove or tamper with an installed device, or fail to have a device installed. A violation of this provision is a criminal offense, punishable by a fine of \$150 to \$600, a jail term of up to six months, or both. With a second offense within a five-year period, the fine increases to

\$300 to \$1,000. In addition, the court is required to extend the order restricting the person's operating privilege for six months for each violation.

Alcohol Assessment and Driver Safety Plan

Assessment and Driver Safety Plan Requirements and Procedures. Any person who has an implied consent refusal or who is convicted of an OWI offense must undergo an assessment of his or her alcohol or controlled substance use at an approved treatment facility, designated by his or her county of residence (or in his or her state of residence, if the person is not a Wisconsin resident). Persons convicted of certain other offenses, such as intoxicated operation of an aircraft, intoxicated operation of a recreational vehicle (snowmobiles, motorboats, ATVs, UTVs, or off-highway motorcycles), or possession of a controlled substance are also required to undergo such an assessment. In addition, the Department of Transportation's Division of Motor Vehicles may order a person to undergo an assessment as the result of an administrative medical review process.

Each county establishes a single driver assessment facility (although certain counties share a single facility), according to standards developed by the Wisconsin Department of Health Services. Tribal treatment facilities that meet certain statutory requirements are also eligible to provide assessments. Assessments are conducted according to a standardized interview procedure, but may also involve an analysis of other relevant information, including a review of available records and reports, and information provided by other persons. Following the completion of the assessment review, the assessor issues a finding, which ranges from "irresponsible use" of alcohol or drugs, to alcohol or drug dependency in remission.

The assessor's finding is used in the development of a driver safety plan, which outlines the driver's obligations in response to the finding. Response measures vary depending on the type of finding. For instance, a person who is found to

have irresponsible alcohol use is required to attend a traffic safety program (or a similar educational program), in which participants discuss, in a group setting, their intoxicant use habits and lifestyle modifications that may help avoid intoxicated driving. Persons who are found to have an alcohol or drug dependency are required to undergo a more comprehensive substance abuse treatment program, which may include up to 30 days of inpatient services. Driver safety plans may also include other elements, at the option of the assessment agency, including mandatory attendance at an intoxicated driving victim impact panel, or a psychiatric evaluation. The treatment or other measures required under a driver safety plan are provided by service providers approved by the county. The person may choose the provider from a list of approved facilities within the geographic area.

The driver safety plan is in effect for a period determined by the assessor. Plans generally may not exceed one year, but can be extended beyond the one-year period with the approval of the Department of Transportation. Other elements of a plan may be amended if recommended by the plan provider or assessment agency.

Financing the Cost of Assessments and Safety Plan Services. Each county establishes an assessment fee, which is paid by the person subject to the assessment order. The fees are intended to cover the cost of the assessment, and generally range from about \$200 to \$300 (although a few have fees outside of this range). Some counties also charge additional fees for rescheduled appointments or failure to appear for an assessment. Fees can be paid in installments, but must be paid in full prior to the assessment.

The person who is subject to a driver safety plan is charged a fee for plan services. The fee for certain services may be waived or reduced if it is determined that the person is unable to pay the full fee, but the fee for a traffic safety or alternative educational program may not be waived. The cost

of some services may be offset from other sources, depending upon the type of service. For instance, private health insurance plans or the state medical assistance program may cover certain substance abuse treatment services. In addition, a portion of the revenues generated by the driver improvement surcharge are retained by counties and are used to cover a portion of the cost of services, and a portion of the state's share of these proceeds is used to supplement the county share in some, typically smaller, counties.

If a court finds that a person does not have the ability to pay the fine or forfeiture and other costs associated with an OWI conviction, the court may reduce the fine or forfeiture and other costs and order that the difference be paid toward the cost of the assessment and driver safety plan.

Noncompliance with an Assessment or Driver Safety Plan. Assessment facilities and driver safety plan providers are required to notify the Department of Transportation if a person fails to comply with an assessment order or driver safety plan. Upon such notice, the Department revokes the person's driver's license, or suspends the license if the reason for the noncompliance is the failure to pay the required fees. The revocation or suspension is ended when the driver complies with the assessment order or driver safety plan (or pays the required fees) and pays a license reinstatement fee.

Community Service Requirements for OWI Offenders

Courts have general authority in criminal cases to order a person to perform community service with a public agency or nonprofit charitable organization in lieu of part or all of a fine imposed upon a criminal conviction. In provisions specific to basic OWI cases, the court is required to order community service in lieu of a fine if it determines that the offender does not have the ability to pay the fine for a criminal offense. In addition, the court has the option to order community service in

lieu of the fine or forfeiture in all basic OWI cases, including a first basic OWI offense. Courts are specifically prohibited, however, from reducing the amount of the driver improvement surcharge in exchange for the performance of community service.

Courts may require any community service ordered for an OWI offense to include work demonstrating the adverse effects of substance abuse or operating a vehicle while intoxicated, including working at an alcoholism treatment facility or a hospital emergency room. If there was a minor passenger under the age of 16 years at the time of the offense, the court may require that the community service work benefits children or demonstrates the adverse effects of substance abuse on children. In addition to community service assignments that involve working at a site that demonstrates the adverse effects of operating while intoxicated, a judge may order a site visit or visits that demonstrate such adverse effects. Such visits must be monitored, as directed by the courts, and offenders may be required to pay a fee to support the monitoring costs.

Summary of Fines, Fees, and Other Costs Associated With an OWI Conviction

As noted in the previous sections, persons convicted of an OWI offense must pay a variety of fees and surcharges, in addition to the forfeiture or fine for the offense. Table 3 shows the forfeiture or fine, surcharges, and other costs typically owed by a person convicted of a first OWI offense and a person convicted of a second offense. For the purposes of this table, it is assumed that the offender had a blood alcohol level in the 0.08 to 0.14 range, that no other penalty enhancers (for a minor passenger, for instance) apply, and that the second OWI offense is prosecuted as a criminal offense (that is, the prior offense occurred within 10 years). Also, some of the amounts shown in the

Table 3: Minimum Costs Associated with a First and Second OWI Conviction

Item	First Offense	Second Offense
Court Costs		
Forfeiture/Fine ¹	\$150.00	\$350.00
Driver Improvement Surcharge	435.00	435.00
Safe-Ride Program Surcharge	50.00	50.00
Penalty Surcharge ²	39.00	91.00
Jail Surcharge	10.00	10.00
Crime Lab Drug Surcharge	13.00	13.00
Justice Information System Surcharge ³	21.50	N.A.
Victim/Witness Surcharge ³	N.A.	67.00
Court Support Services Surcharge ³	68.00	N.A.
DNA Surcharge	N.A.	200.00
Circuit Court Fee ³	25.00	N.A.
Criminal Court Costs ³	N.A.	163.00
Ignition Interlock Surcharge ⁴	N.A.	50.00
Total Amount Paid to the Court	\$811.50	\$1,429.00
Other Costs		
Driver Assessment Fee ⁵	\$250.00	\$250.00
Occupational License Fee	50.00	50.00
License Reinstatement Fee	200.00	200.00
Ignition Interlock Device Costs ⁶	N.A.	1,000.00
Total Amount of Other Costs	\$500.00	\$1,500.00
Grand Total	\$1,311.50	\$2,929.00

¹ The forfeitures/fines for an OWI offense may vary depending upon the circumstances of the offense, subject to judicial discretion. The amounts shown represent what are typical amounts for a case with no aggravating circumstances, according to sentencing guidelines. The forfeitures/fines are generally based on the offender's blood-alcohol concentration at the time of the violation.

² The penalty surcharge is equal to 26% of the forfeiture/fine.

³ Certain surcharges are applicable in civil (non-criminal) cases, like first offense OWI, but not in criminal cases, while others are applicable in criminal cases, but not civil cases.

⁴ The ignition interlock device surcharge is applicable for all second and subsequent offenses and first-offense OWI cases where the person had a blood alcohol concentration of 0.15 or more, or where the person refused to provide a breath or blood sample for chemical testing at a traffic stop.

⁵ The driver assessment fee varies by county. The amount shown is the median value.

⁶ Ignition interlock device fees vary by service provider. The amount shown is typical for the cost of installation, maintenance, and other fees.

Note: The table does not include the crime board prevention surcharge, which is a county-option surcharge created under 2015 Act 55. For offenders to whom this surcharge applies, a \$20 fee is added for each felony or misdemeanor conviction.

table will vary depending upon the location and upon decisions of individual courts; the amounts shown represent what might be the typical minimum costs per case. In addition to the costs resulting directly from an OWI conviction, as shown in the table, a driver with an OWI conviction is responsible for paying some or all of the costs associated with driver safety plan services, legal fees, and can expect to pay more for automobile insurance, although the amount will vary based on a number of factors affecting underwriting decisions.

Enforcement and Court Procedures Applicable to OWI Offenses

Traffic Stop, Arrest, and Testing

With respect to the enforcement of OWI laws, as well as all other traffic regulations, a law enforcement officer may stop a vehicle if he or she has reasonable cause to believe that a violation has occurred. Once a stop has been made, the officer may investigate the violation. The officer may also encounter other situations in which such investigation is warranted, such as in cases where an officer is assisting a motorist who has stopped alongside the highway. In cases where impaired driving is suspected, the officer may require the driver to perform various tasks designed to show the degree of impairment, if any. These tests are referred to collectively as a "field sobriety test." If the officer has reasonable cause to believe, based on the results of a field sobriety test or other observations, that the driver was operating a motor vehicle while impaired, he or she may also ask the driver to take a preliminary breath screening test. The results of the preliminary breath screening test, the field sobriety test, and other observations may be used in establishing probable cause for making an arrest for an OWI offense.

While the preliminary breath screening test is used to establish probable cause to make an arrest, a separate, "evidentiary" test is used in court as evidence of impairment or of a per se violation. Once an arrest has been made, the officer may request that the person take an evidentiary breath, blood, or urine test. The Department of Transportation, through its chemical test section in the Division of State Patrol, establishes the procedures to be used for evidentiary breath tests, and provides training and certification of breath testing equipment. The State Laboratory of Hygiene establishes the methods for evidentiary blood and urine analysis, while the Department of Health Services approves permits for the laboratories and individuals performing blood and urine analysis.

Blood samples may be taken only by a physician, registered nurse, medical technologist, physician assistant, phlebotomist, other medical professional who is authorized to draw blood, or a person acting under the direction of a physician. If a person is convicted of an OWI offense, and the person had a blood sample taken at the time of arrest, the court is required to impose and collect, from the defendant, any costs paid or charged to the law enforcement agency for the blood draw.

Every law enforcement agency is required to be prepared to administer at least two of the three types of tests, either at its own facilities or at other approved facilities. The law enforcement agency conducts a test and, if requested by the driver, must conduct another test by an alternative method. The driver may also request a test conducted by a qualified third party, but is responsible for the cost of such a test.

Procedures Following a Crash

Following a crash that results in the great bodily harm to any person, a law enforcement officer may request a driver involved in the crash to submit to a breath, blood, or urine test if the officer

detects any presence of alcohol or controlled substance. This test, which may be requested without the arrest of the driver, follows the same procedures involved with a test following an arrest and may be used as evidence in any subsequent criminal trial. Similarly, if a crash results in death or great bodily harm to any person, and a law enforcement officer has reason to believe that a driver involved in the crash violated any state or local traffic law, even if the violation did not involve alcohol or controlled substances, the officer may request that the driver submit to testing. Again, this test does not require the arrest of the driver and the results may be used as evidence in any subsequent court proceeding.

Administrative License Suspension Following a Positive Test Result

If an evidentiary test indicates the presence of a restricted controlled substance or a prohibited blood alcohol concentration, then the person's license is suspended for six months, even if the person is not charged with intoxicated driving or is eventually acquitted of such a charge. Upon receipt of a test result indicating the presence of a restricted controlled substance or a prohibited blood alcohol concentration, the law enforcement officer that ordered the test must provide a notice to the driver of his or her right to an administrative or judicial review of the administrative suspension. The notice serves as a 30-day temporary driver's license, after which time the suspension period begins. The driver may request a review within 10 days and the Department of Transportation is required to conduct the review within 30 days. The review is generally limited to whether the traffic stop, arrest, and testing were conducted according to correct procedures and whether the results of the test met the requirements for administrative suspension. If the Department's hearing examiner rules against the driver in such a hearing, the driver may request a judicial review of the decision in circuit court.

License Revocation for Implied Consent Refusal

If a person who has been arrested on suspicion of an OWI offense refuses to take a blood, breath, or urine test upon request, the law enforcement officer must prepare a notice to revoke the person's license. The revocation begins 30 days after the notice is prepared, although the driver may request a judicial review, similar to the administrative suspension review, within 10 days of the refusal. The revocation period depends upon the number of prior OWI offenses or prior implied consent refusals, as shown earlier in Table 2. A person whose license is revoked for a test refusal must submit to an alcohol assessment and comply with a driver safety plan, and is subject to an ignition interlock device order. These measures are required even if the person is not subsequently charged or convicted of an OWI offense.

Limits on Dismissals and Deferred Prosecution

Wisconsin statutes prohibit a prosecutor, on his or her own initiative, from dismissing or amending a charge involving an OWI offense. In order to dismiss or amend such a charge prior to arraignment, a prosecutor must apply to the court and identify the reason(s) for the proposed dismissal or amendment. The court, in turn, may not agree to the dismissal or amendment unless it finds that it would be consistent with the public's interest in deterring OWI violations.

Wisconsin law prohibits the use of deferred prosecution agreements for alleged OWI offenses. Deferred prosecution agreements establish conditions for a person charged with a law violation that, if complied with for a specified period of time, would result in the dismissal of the charge.

Driver Improvement Surcharge Revenue

Distribution of Surcharge Revenue

Any person convicted of an OWI offense is required to pay a \$435 driver improvement surcharge, in addition to the fine or forfeiture and other general surcharges. As indicated earlier in this paper, the state and counties each receive a percentage of this surcharge to fund OWI-related services. Failure to pay the surcharge may result in a license suspension of up to two years, or until the surcharge is paid. This section describes the collection and use of surcharge revenues for OWI enforcement and prevention programs.

Of the amount of driver improvement surcharge revenues collected by the courts, 50.3% is retained by the county in which the conviction occurred and 49.7% is forwarded to the state. The county share is allocated to county human service departments to offset a portion of the costs of alcohol assessments and driver safety plan services. The state share supports a variety of OWI enforcement and prevention programs, and is allocated to these programs by the Department of Administration. Table 4 shows the allocation of state surcharge revenue in 2021-22. A description of each program is provided below.

Chemical Test Section and Breath Screening Instruments. All evidentiary breath testing equipment used by state and local law enforcement agencies is owned and maintained by the state through the State Patrol's Chemical Test Section. In addition to maintaining the instruments, Chemical Test Section personnel train and certify law enforcement in the use of the instruments. The state provides breath testing instruments to law enforcement agencies at no charge to those agencies. Breath testing instruments are also provided to eligible testing sites. The remaining instruments are used for training or are out of service for maintenance. In 2021, over 6,600 breath tests were

Table 4: Allocation of State Driver Improvement Surcharge Funds, 2021-22

Program	Agency	2021-22
Chemical test section, State Patrol	Department of Transportation	\$1,147,100
Breath screening instruments	Department of Transportation	378,700
State Laboratory of Hygiene	University of Wisconsin	1,619,200
Services for drivers, local assistance	Department of Health Services	911,400
Safe-ride grant program	Department of Transportation	429,400
Services for drivers	Department of Public Instruction	139,300
Crime victim compensation services	Department of Justice	<u>84,900</u>
Total		\$4,710,000

Note: Total driver improvement surcharge revenue was \$4,404,200, or \$305,800 lower than the amount allocated. The amount allocated included a portion of the unspent revenue balance from the prior year.

conducted for OWI driving offenses, absolute sobriety tests, and other assorted recreational purposes.

In addition to administering the breath testing instrument functions, the State Patrol's Chemical Test Section also tests and certifies ignition interlock devices and maintains a list of approved device service providers.

State Laboratory of Hygiene. The State Laboratory of Hygiene (SLH) Forensic Toxicology Section, which is attached to the University of Wisconsin-Madison, conducts 90% of blood alcohol and drug testing for OWI enforcement and motor vehicle deaths in Wisconsin. In recent years, SLH has conducted approximately 20,000 alcohol tests and 9,273 tests for drugs other than alcohol for both OWI and motor vehicle death cases annually. In addition, SLH staff make about 300 court appearances in response to subpoenas in OWI cases per year. Turnaround time for alcohol tests in OWI cases average 41 days and for drug tests, 230 days. The section also conducts 1,642 alcohol and drug tests annually for coroners and medical examiners. The SLH has implemented new testing using an instrument which has enabled the laboratory to expand the scope and capability of the total number of drugs tested and detect synthetic drugs, such as fentanyl analogs and synthetic cannabinoids. A second instrument was purchased with funding

assistance from the SLH Chemical Emergency Response Department to cross-collaborate with the national Laboratory Response Network.

Services for Drivers, Local Assistance. The Department of Health Services provides supplemental assistance to county health departments for alcohol assessment and driver safety plan services costs. Counties may apply for assistance if the amount of surcharge revenue retained by the county, plus insurance reimbursements and program fees, is insufficient to cover program costs.

Safe-Ride Grant Program. The safe-ride grant program provides grants to local governments or nonprofit organizations for 80% of the cost of taxi rides for potentially intoxicated persons from alcohol establishments to their homes. Grants may also be used to cover the costs of advertising the availability of these services. The grant recipient is responsible for the remaining cost. By statute, the safe-ride grant program receives 9.75% of the state share of driver improvement surcharge revenues (which was equal to \$429,400 in 2021-22).

In addition, DOT collects a \$50 safe-ride program surcharge that applies to persons convicted of operating while intoxicated offenses, as shown in Table 3. The revenue from this surcharge is appropriated for the safe-ride grant program. In

2021-22, the safe-ride grant program appropriation received \$596,700 from this surcharge.

Department of Public Instruction, Services for Drivers. The Department of Public Instruction's services for drivers appropriation funds the cost of approving school based driver education programs in public and private high schools, including assuring that programs will follow applicable statutes regarding driver education and that all instructors are properly licensed by the Department. Additionally, consultation is provided to school districts and state organizations regarding best practices in driver education and in the dangers of alcohol and other drug use, in general, and as it relates to driving.

Department of Justice Victim Compensation Services. The Department of Justice's victim compensation services appropriation funds a position to administer the crime victim compensation program. The program provides compensation payments to victims of crimes, including victims of crashes caused by an intoxicated driver. Payments are made for up to \$40,000 in medical expenses, lost wages, or loss of dependent support. Although the appropriation of driver improvement surcharge revenues funds administrative costs, victim payments are made from other fund sources, including the state general fund, penalty surcharges, and federal grants.

History of Driver Improvement Surcharge Collections

Table 5 shows the amount of the state's share of driver improvement surcharge collections over the past 10 years. Under 2013 Act 20 (the 2013-15 biennial budget), the surcharge was increased from \$365 to \$435. Due to this change (including a modification to the state percentage), the state share went from \$146.00 to \$216.20, effective July 1, 2014 (which first affected collections in 2014-15).

Table 5: State Share of Driver Improvement Surcharge Collections

Fiscal Year	State Share Collected
2012-13	\$3,917,900
2013-14	4,203,000
2014-15	4,923,700
2015-16	4,791,700
2016-17	4,665,100
2017-18	4,605,100
2018-19	4,785,300
2019-20	4,423,400
2020-21	4,235,700
2021-22	4,404,200

Other State Programs Related to OWI Enforcement and Prevention

In addition to the state programs funded with driver improvement surcharge revenues, the state has several other programs funded from other sources related to OWI enforcement and prevention.

Department of Transportation Programs

Impaired driving countermeasure activities are implemented by DOT's Bureau of Traffic Safety, within the Department's Division of State Patrol. Funding is used for both grants to local governments, and statewide initiatives. Local grants are generally expended for enhanced law enforcement campaigns and educational and prevention programs. Statewide initiatives can include media campaigns related to the legal and safety consequences of impaired driving.

DOT's outlines its statewide strategy for highway safety in two documents: the strategic highway safety plan, which covers a three-year period; and the highway safety improvement plan, covering one year. These plans include designated

sections on impaired driving countermeasures, and are required by federal National Highway Traffic Safety Administration (NHTSA), which also provides DOT with funding for their implementation via the highway safety grants program. The grants include designated funding for impaired driving countermeasures through the section 405(d) program (named after the citation for the program in Title 23 of the U.S. Code.) In federal fiscal year 2022, NHTSA provided \$3,751,100 to DOT in section 405(d) grant funding. In some years, DOT also augments NHTSA funding with state funds, which are spent through the Department's vehicle inspection, traffic enforcement and radio management appropriation. However, in 2021-2022, DOT did not appropriate any state funds for this purpose.

Department of Corrections Programs

The Department of Corrections provides substance abuse treatment services, including for OWI offenders, to inmates in its institutions and centers, and to offenders supervised in the community. The facilities that provide substance abuse programming include Columbia Correctional Institution, Drug Abuse Correctional Center, Chippewa Valley Correctional Treatment Facility, Milwaukee Secure Detention Facility, Jackson Correctional, Oshkosh Correctional, Kettle Moraine Correctional, Prairie du Chien Correctional, Stanley Correctional, Racine Correctional, Racine Youthful Offender Correctional, St. Croix Correctional Center, Flambeau Correctional Center, Oakhill Correctional, Black River Correctional Center, Redgranite Correctional, Robert E. Ellsworth Correctional Center, Milwaukee Women's Correctional Center, Taycheedah Correctional and New Lisbon Correctional.

In 2021-22, these facilities provided substance abuse treatment services to 2,680 inmates. Inmates participate in four to six month residential programs, which utilize a cognitive/behavioral treatment model to address substance abuse issues and self-management skills. Outside state facilities, in the community, the Department's Division

of Community Corrections contracts with private community vendors to provide substance abuse services, including residential programs in half-way houses/residential service providers, or outpatient programs provided at day reporting centers or in the community. Provision of these services is based on needs assessments and availability of programming and resources.

Under 2009 Act 100, a separate general fund appropriation was created in Corrections to provide community probation supervision, fund a monitoring center, and fund enhanced community treatment for persons convicted of a second or third offense related to driving while intoxicated. Statutes specify that services provided from the appropriation are to be provided with no waiting list. If the moneys appropriated to Corrections are not sufficient to fully fund the services with no waiting list, the Department is required to notify the Joint Committee on Finance. In 2022-23, the services for drunken driving offenders appropriation is budgeted \$4,978,100 and 27.0 positions.

Federal Impaired Driving Provisions

Although impaired driving policy is generally driven by state laws, the federal government has periodically enacted provisions to encourage states to adopt certain impaired driving laws. Typically, those provisions establish standards that, if not adopted by a state by a certain deadline, will result in the loss of a portion of the state's federal transportation aid. This section describes a few significant examples.

0.08 Prohibited Alcohol Concentration. The 2001 federal Department of Transportation and Related Agencies Appropriations Act included a provision that required the U.S. Department of Transportation to withhold certain percentages of federal highway aid from states that did not enact and enforce a 0.08 prohibited blood alcohol

concentration law by September 30, 2003. Initially, the percentage withheld was set at 2%, but gradually increased with each year that a state was out of compliance. Wisconsin adopted the 0.08 law during the 2003 legislative session, and was not sanctioned under this provision. All states have now adopted a 0.08 per se law.

Repeat Offender Law. A provision included in the federal Transportation Equity Act for the 21st Century, passed in 1998, sanctions states that do not have all of four specified sanctions for repeat OWI offenders. The four sanctions include mandatory driver's license suspension for at least one year (with allowances for limited occupational license eligibility provided that the driver is subject to ignition interlock device restrictions for at least one year), mandatory vehicle sanctions (immobilization, seizure, or ignition interlock device installation), mandatory assessment of alcohol use, and minimum jail or community service terms. Beginning in federal fiscal year 2001, states that were not in compliance with all four laws had a portion of their federal highway aid transferred to traffic safety programs (currently 2.5% of selected major federal program categories). After being subject to the transfer in federal fiscal year 2001, Wisconsin adopted changes, effective in September, 2001, that brought the state into compliance with all four repeat offender laws for the next several years. Changes to both federal and state law resulted in noncompliance in federal fiscal years 2011 and 2012, subjecting the state to the transfer provision. With more recent changes to the federal law, the state has since been in compliance with this provision.

Open Container Law. Along with the repeat offender transfer provision, the Transportation Equity Act for the 21st Century also included a funding transfer provision for states that do not prohibit, with limited exceptions, the possession of an opened alcoholic beverage container or the consumption of an alcoholic beverage in a motor vehicle operating on a public highway. The transfer provisions for states not in compliance with this

requirement are the same as for the repeat offender law. Wisconsin was in compliance with this requirement at the time of the enactment of the federal law and has remained in compliance.

Commercial Motor Vehicle Laws. The federal Commercial Motor Vehicle Safety Act of 1986, and subsequent amendments, establish minimum national standards for the licensing of commercial motor vehicle drivers. Certain provisions of the Act require states to impose certain impaired driving laws. Most notably, states are required to have a commercial motor vehicle 0.04 per se blood alcohol concentration law. In addition, federal law requires states to disqualify commercial driver's licenses for one year following a conviction for a "major" violation, which includes, among others, an implied consent refusal or an OWI violation, regardless if the refusal or violation occurred while operating a commercial motor vehicle or some other vehicle. For a second major violation, states are required to impose a lifetime disqualification, although the driver may be eligible for reinstatement after 10 years under certain circumstances (Wisconsin law does not allow for such reinstatement).

OWI Statistics

This section provides data on the trends in OWI convictions and alcohol-related traffic crashes. Table 6 shows the number of Wisconsin convictions for basic OWI and other counted offenses by calendar year over the past decade. These figures represent the number of convictions for offenses occurring in the state, including convictions of residents of other states. Convictions of Wisconsin residents for offenses committed in other states are not reflected in this data. Total convictions have declined substantially during this period. As compared to 2012, the number of OWI convictions in 2021 was 28.7% lower.

Table 6: Number of OWI and Related Convictions by Year

Year	Convictions
2012	26,632
2013	26,081
2014	24,012
2015	23,931
2016	23,385
2017	22,488
2018	22,294
2019	20,956
2020	15,790
2021	18,999

Table 7 shows the number of persons killed in traffic crashes involving alcohol. The figures include any incident where a responding law enforcement officer or coroner noted in a post-accident report that a driver, bicyclist, or pedestrian had used alcohol prior to the crash. Since bicyclists and pedestrians are included, and alcohol use, not impairment, is the standard, not all fatalities shown in the table involved impaired driving. In addition to the number of alcohol-related traffic fatalities, the table also shows the

Table 7: Number of Alcohol-Related Traffic Fatalities and Percentage of Total Fatalities

Year	Alcohol-Related Traffic Fatalities	Total Traffic Fatalities	Percentage of Total Fatalities
2012	223	601	37.1%
2013	185	527	35.1
2014	162	498	32.5
2015	190	555	34.2
2016	143	588	24.3
2017	169	594	28.5
2018	159	576	27.6
2019	140	551	25.4
2020	167	593	28.2
2021	166	595	27.9

percentage of total traffic fatalities that this number represents. As shown in the table, alcohol-related and total traffic fatality trends have generally decreased since 2012, with a recent increase in both alcohol-related and total traffic fatalities in the past two years.

Table 8 shows the total number of alcohol-related traffic crashes over the same period, as well as the total number of reportable crashes, and the percentage that were alcohol-related. Alcohol-related and total traffic crashes have gradually increased in recent years (with the exception of alcohol-related crashes 2019, and both types of crashes in 2020, which decreased). Alcohol-related crashes as percentage of total traffic crashes, have remained relatively constant at about 4.2% of all traffic crashes per year through 2019. While there was a general decrease in total traffic crashes in 2020 and 2021, the number alcohol-related crashes in these years climbed to 5.2% and 5% of all traffic crashes, respectively. The general decrease in total traffic crashes in 2020 and into 2021 may have been the result of less vehicle travel during the initial phases of the COVID-19 pandemic.

Table 8: Number of Alcohol-Related Traffic Crashes and Percentage of Total Crashes

Year	Alcohol-Related Traffic Crashes	Total Traffic Crashes	Percentage of Total Crashes
2012	4,933	109,385	4.5%
2013	4,954	118,254	4.2
2014	4,932	119,734	4.1
2015	5,174	121,615	4.3
2016	5,153	129,051	4.0
2017	6,151	139,870	4.4
2018	6,255	144,212	4.3
2019	6,058	145,288	4.2
2020	6,050	115,694	5.2
2021	6,368	128,296	5.0